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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,644	11/26/2003	G. David Jang	S63.2H-11280-US01	8788
499 7590 01/15/2009 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
01/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/723,644

Applicant(s)

JANG, G. DAVID

Examiner

Vy Q. Bui

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of invention of species I in the reply filed on 4/30/2008 is acknowledged and is made final.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

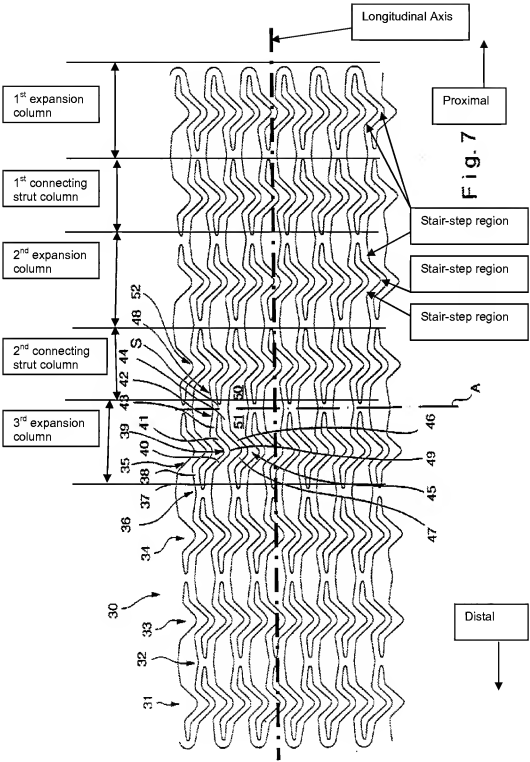
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-9, 10, 12-23 are rejected under 35 U.S.C. 102(e) as being anticipated by WO98/35634 or US 6,193,747 B1.

As to claims 1-9, 10, 12-23, Fig. 7 of WO98/35634 or US 6,193,747 B1 as shown below includes substantially all structural limitations, such as stair steps, 1st, 2nd, 3rd expansion columns, 1st and 2nd connecting strut column, of the claimed invention:



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as obvious over WO98/35634 or US 6,193,747 B1.

Fig. 7 of WO98/35634 or US 6,193,747 B1 does not disclose a strain relief notch. However, Fig. 8 of WO98/35634 or US 6,193,747 B1 shows strain relief notch 72, 74, for example. It would have been obvious to one of ordinary skill in the art to form strain relief notches to the stent shown in Fig. 7 of WO98/35634 or US 6,193,747 B1 as disclosed in Fig. 8 of WO98/35634 or US 6,193,747 B1 as this configuration provide a strain relief region for the stent.

Response to Arguments

Applicant's arguments filed 10/21/2008 have been fully considered but they are not persuasive.

The Applicant (paper 10/21/2008) argued that the "Office Action" (8/18/2008) was not sufficiently clear to allow a response and stated that "As stated in the MPEP in § 706, "The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely

at the earliest opportunity.” The Office Action has not articulated how von Oepen supposedly anticipates all of the elements of the instant claims. For obvious reasons, Applicant is reluctant to speculate which portions of von Oepen the Office could possibly consider to be anticipatory to the elements recited in the instant claims. As such, Applicant requests a subsequent non-Final Office Action that clearly articulates the structure in von Oepen that the Office considers to be equivalent to the elements of the pending claims in order to allow Applicant the opportunity to respond appropriately.”.

Applicant further argued that Von Oepen's Fig. 7 does not teach or suggest 1st connecting struts with a proximal and distal sections and stair-step regions.

A fair reading of Von Oepen reference and Fig. 7 as shown in the previous non-final office action would clearly reveal that, like all other stents in the art, the Von Oepen stent has a longitudinal axis, proximal and distal directions. Regarding stair-step regions, from Fig. 1 (elected species) and the specification of the present invention, it is clear that any bend or sudden change in the strut, such as locations labeled as 39 with straight legs 40, 41 (Von Oepen's Fig. 7), is recognized as a stair step region. The annotated Fig. 7 of Von Oepen in the non-final previous “Office Action” was self-explanatory and at least sufficiently clear to convey the position of the examiner.

It is confirmed that by identification of 1st, 2nd and 3rd expansion columns, 1st and 2nd connecting columns in Von Oepen's Fig. 7, the other elements such as proximal, distal directions and stair-step regions are clearly recognized by any one of ordinary skill in the art, especially the applicant, who is very skillful in the art.

However, in an effort to make the record even clearer, more annotation has been included for the file record.

Response to Amendment

The amendment filed on 10/21/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Von Oepen reference. Von Oepen's Fig. 7 as shown above clearly show 1st and 2nd expansion strut pairs similar to a strut pair in 3rd expansion column shown as strut pair having bend/loop 39 with straight legs 40, 41 and bend/loop 45 with straight legs 46, 46.

These strut pairs of 1st, 2nd and 3rd expansion columns in Von Oepen's Fig. 7 clearly show step regions similar to step regions as specified in Fig. 1 and specification of the present invention.

Conclusion

Applicant's amendment of independent claim 1 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773